U. S. SENATE
Republican Policy Committee
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3 Million Versus 360
Help for Self-Employed vs. Tax Break for Millionaires

"We are talking about turning what is now a tax break for millionaires, not minorities. . . and we are turning those tax breaks into health care for ordinary citizens."

U. S. Rep. Bill Thomas, (R-CA)
Congressional Record, 2/21/95, H-1930

On January 1, 1994, millions of self-employed Americans lost their ability to utilize a 25 percent federal tax deduction to help defray the cost of paying health insurance premiums. The Treasury Department estimates that 3.2 million Americans, including more than 1.1 million women and 300,000 Black and Hispanic entrepreneurs, will claim the deduction in 1994 — that is, if Congress and the President reinstate it before these Americans file their tax returns by April 17.

Wednesday, the Senate Finance Committee ordered reported H.R. 831, which restores the 25 percent federal tax deduction retroactively for the 1994 taxable year. The bill, as passed by the committee, also increases the deduction to 30 percent in 1995 and makes it permanent at that level. The House passed its version on February 21, on an overwhelming, bipartisan vote of 381-44.

The Senate Committee offset the revenue loss of some $3 billion by tightening three loopholes: 1) phasing out the Earned Income Tax Credit for individuals who have more than $2,450 in taxable interest, dividends, net rents, and royalties; 2) changing capital gains tax rules on Americans who renounce their citizenship for tax purposes; and most significantly, 3) repealing a tax code provision that authorized a 1978 policy of the Federal Communications Commission to grant a tax deferral on gains from the sale of broadcast facilities to minority individuals or minority-controlled entities, which alone is estimated to recover more than $1.6 billion over five years and $3.7 billion over ten years.

Opponents of H.R. 831 claim the bill's offset is an assault on "the hopes and dreams of minorities" and affirmative action. Listed below are points in support of H.R. 831, including eliminating a tax bonus for millionaires in favor of tax relief for small business men and women.

How the FCC Created a Special Tax Break

- Congress in 1943 gave the Federal Communications Commission (FCC) authority to grant tax deferrals to owners of broadcast facilities who were forced to sell their properties to break up monopolies and "duopolies" during World War II (Section 1071 of the Tax Code). Congress's intent was to *"alleviate the burden of taxpayers who had been forced to sell their radio stations under difficult wartime circumstances."*[1]

- The FCC, in 1978, used that authority to give a tax preference to radio, TV, and later to cable broadcasters (1982) who sold their properties to minority-owned firms. For this policy, the FCC defines minorities as including "Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders."[2] At the time, approximately .5 percent of broadcast licenses were held by minorities or minority-controlled entities. Since 1978, the FCC has issued 360 minority tax certificates, 80 percent of which involve radio properties. Currently, minorities or minority-controlled entities own only 2.9 percent of broadcast licenses.

- The average sales price for transactions in which tax certificates were granted is $3.5 million for radio, and $38 million for television (no data is available for cable sales).[3]

Why The Tax Break Should Be Changed

- The FCC's progressive loosening of the standards for issuing tax certificates went *far beyond what Congress originally contemplated* (although Congress has attached riders to the FCC's appropriation bills to protect the policy).

- The FCC's interpretation and administration of the *tax certificate program has not been supervised by the IRS*, or any other government body that could evaluate the cost of the program. Also, there has been no systematic review of its total cost to taxpayers, and the benefits of the FCC tax certificate program have never been quantified in any meaningful way.

- During the 17-year history of the policy, the number of *minority-owned broadcast properties has increased to just 2.9 percent of the nation's 10,000 outlets*. The policy simply has not worked as intended.

- Recent news reports suggest that the *FCC tax certificates are not fostering "real" minority ownership* of broadcast stations. In some instances, a minority investor purports to control the buyer (often a limited partnership), but effectively lacks real control due to the minority investor's small economic interest in the partnership. In other instances, *minority buyers have resold the broadcast property shortly after the original sale.* In several cases where the purchaser was a partnership, the minority investor had a pre-existing buyout agreement with other limited partners, a pattern which fits the Viacom transaction.

- *The real beneficiaries of the FCC minority ownership property haven't been minorities, but those who sell to minorities* or minority-led groups and get to defer thousands, if not millions, in taxes. Viacom, one of the world's largest media companies, has inked a $2.3 billion deal with a minority-led investor group to sell off its cable outlets. The deal's investor of record, Frank Washington, is allowed to cash out his minimal investment (perhaps as little as $1 million of his own funds, or .04 percent of the total sales price), at considerable profit, after just a few years. Frank Washington is the former Carter Administration official and FCC attorney who designed the minority ownership program.[4] Meanwhile, media reports indicate Viacom stands to defer a $440-$660 million tax bill in the deal.

Not An End to Affirmative Action

- Contrary to the overheated rhetoric of those who support the tax break, this is hardly an assault on affirmative action. In fact, no less than four other affirmative action rules specifically involving the sale and ownership of broadcast facilities will remain in effect in federal communications policy.[5] They include:

1. In the auctioning of personal communications services licenses, the FCC is directed to prescribe regulations to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." The FCC is offering minorities financial incentives such as bidding preferences and favorable payment terms (in addition to tax certificates). 47 U.S.C.S. § 309(j)(4)(D)

2. FCC multiple ownership rules provide exemption for "minority-controlled" broadcast facilities from certain restrictions on the granting or transfer of commercial TV broadcast stations which result in an aggregate national audience exceeding 25 percent. "*Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander." (*italics* in original)
   47 CFR § 73.3555(d)(2)(ii)(1994)

3. FCC policy awards a quality enhancement credit for minority ownership and participation in station management in comparative licensing process. In short, when the FCC is faced with several applications competing for the same broadcast channel, FCC policy gives preference to ownership and active management by members of a minority group.
   68 FCC 2d 381, 411-412 (1978)

4. Under the FCC's "Distress Sale" policy, existing licenses in jeopardy of having their licenses revoked or whose licenses are designated for a renewal hearing are given the option of selling the license to a minority-owned or minority-controlled firm for up to 75 percent of fair market value.
   68 FCC 2d 983 (1978)

Not a Retroactive Tax

- Opponents of eliminating the tax break cite its effective date -- January 17, 1995 -- as unfairly retroactive, particularly to Viacom, who on January 4 announced the sale of its cable properties, although no contract had yet been signed. Keep these dates, reports and events in mind:

  - January 4, 1995: "Viacom . . . intends to sell its cable television systems for more than $2 billion to a minority-controlled enterprise under a program that would give Viacom a federal tax break of as much as $400 million, sources close to the company said." (*Washington Post*, p. A1)

  - January 11: "Federal regulators are expressing concerns about approving a proposed deal in which Viacom, Inc. could save $400 million on taxes. . . . While stopping short of saying the FCC will block the deal outright, senior officials of the agency say it will be subjected to an unusual level of scrutiny." (*Washington Post*, p. D1)

  - January 17, 1995: House Ways and Means Chairman Bill Archer issues a press release "putting taxpayers on notice that the Committee would immediately review the operation of section 1071 to explore possible legislative changes to section 1071, including the possibility of repeal."[6] The press release stated that any changes to section 1071 may apply to transactions completed, or certificates issued by the FCC, on or after the date of the announcement.

  - January 18: Chairwoman Nancy Johnson of the Ways and Means Subcommittee on Oversight announces a hearing to examine the operation and administration of Code section 1071. The hearing is scheduled for January 27.

  - January 20: Viacom CEO Sumner Redstone finalizes and officially signs the contract inking $2.3 billion sale of cable properties to an investor group, led by Frank Washington. The Viacom deal is contingent upon the FCC granting a Section 1071 tax deferral.[7]

  - February 3: Viacom files with the FCC for tax certificates.

  - February 6: Ways and Means Chairman Bill Archer introduces a bill to repeal section 1071.

- As of today, the FCC has yet to issue a tax certificate in the Viacom sale.

Real Help for the Self-Employed

- While the FCC's minority ownership policies have helped 360 minorities to obtain ownership of broadcast stations, the 25 percent tax deduction for health insurance premiums for the self employed helped nearly 3 million Americans in 1993 save more than $2 billion in taxes. *It is estimated that 3.2 million Americans, including nearly 180,000 Blacks and more than 1.1 million women*, will use the tax deduction for 1994 if Congress acts.

- Unlike the FCC minority ownership tax break, *nearly two-thirds of self-employed persons claiming health insurance deductions for 1993 (more than 1.8 million persons) had adjusted gross incomes of under $50,000*; 84 percent had adjusted gross incomes under $100,000.[8]

- While the FCC minority ownership tax break helps very few in one industry, the health insurance deduction primarily benefits people in a variety of enterprises, such as:[9]

Farmers	Ranchers	Grocers
Fruit stand owners	Butchers	Bakers
Clothing retailers	Sporting goods store owners	Artists
Small newspaper publishers	Furniture manufacturers	Shoe store owners
Small radio station owners	General contractors	Painters
Toy makers	Truckers	Realtors

Self-employed Workers in Nonagricultural Industries[10]

Industry	Men	Women	Total Self-employed
Mining	16,000	1,000	17,000
Construction	1,478,000	77,000	1,555,000
Manufacturing	318,000	124,000	442,000
Transportation	319,000	53,000	372,000
Wholesale/Retail	1,141,000	750,000	1,891,000
Finance/Ins./Real Estate	453,000	211,000	664,000
Services	2,193,000	1,869,000	4,062,000
TOTALS	**5,918,000**	**3,085,000**	**9,003,000**

- *The health insurance tax deduction helps primarily those who create the most jobs in our economy: Small businesses.* Government data shows that small business has created two of every three net new jobs in our economy since the 1970s, and a substantial majority of those jobs were created in the smallest firms -- those with fewer than five employees, which constitute 60 percent of all employers in this country.

- Even if Congress approves H.R. 831, *regular [so-called "C"] corporations will still have a substantial tax advantage over unincorporated small businesses.* Corporations can exclude all the costs of providing health insurance to their employees. Additionally, self-employed business owners often pay about 30 percent more than larger companies for similar benefits because of higher administrative costs.

- *Self-employed business owners face a huge tax increase* if H.R. 831 is not approved, likely increasing the number of Americans who will play Russian Roulette with their health care by canceling insurance they can't afford.

Self-Employed Business Owners By State[11]

STATE	NUMBER	STATE	NUMBER
Alabama	134,000	Montana	46,000
Alaska	27,000	Nebraska	62,000
Arizona	130,000	Nevada	43,000
Arkansas	87,000	New Hampshire	52,000
California	1,400,000	New Jersey	190,000
Colorado	146,000	New Mexico	75,000
Connecticut	116,000	New York	578,000
Delaware	17,000	North Carolina	229,000
D.C.	17,000	North Dakota	20,000
Florida	418,000	Ohio	287,000
Georgia	199,000	Oklahoma	133,000
Hawaii	35,000	Oregon	151,000
Idaho	50,000	Pennsylvania	352,000
Illinois	345,000	Rhode Island	27,000
Indiana	148,000	South Carolina	94,000
Iowa	100,000	South Dakota	29,000
Kansas	98,000	Tennessee	162,000
Kentucky	143,000	Texas	578,000
Louisiana	145,000	Utah	59,000
Maine	74,000	Vermont	32,000
Maryland	149,000	Virginia	168,000
Massachusetts	199,000	Washington	209,000
Michigan	237,000	West Virginia	43,000
Minnesota	146,000	Wisconsin	173,000
Mississippi	72,000	Wyoming	19,000
Missouri	171,000		

What Others Say

"I have great respect for the men and women on both sides of this debate on H.R. 831. However, in my opinion, I think much of the opposition's debate on H.R. 831 and repeal of [section] 1071 is off point.

"Many of my colleagues think that this repeal is pointed towards minorities. If we do away with this provision, then minorities would somehow lose out on benefits that could help them prosper.

"In fact, the unintended consequence of this well-intentioned policy is to benefit the business that sells to a minority rather than the minority.

"Moreover, since 1941 minority ownership of broadcast outlets has increased by less than 2.2 percent. We can encourage minority ownership by supporting measures other than this warped method of taxation."

U. S. Rep. J. C. Watts (R-OK),
Congressional Record, 2/21/95, H-1946

Endnotes

1. U. S. House of Representatives Report 104-32, by the Committee on Ways and Means, p. 16.
2. *Ibid.*, p. 10.
3. Source: Federal Communications Commission
4. Source: Paul Farhi, "Viacom Finalizes Deal to Sell Cable Systems; Firm Expected to Save Millions in Taxes," Washington Post, 2/21/95, p. C1. Also, William Kristol, *"A Hearty Welcome to the Sudden Debate on Racial Preferences,"* Washington Times, 2/21/95, p. A19.
5. Source: Congressional Research Service
6. House Report 104-32, p. 4.
7. Paul Farhi, Washington Post, 1/21/95, p. C1.
8. Source: Internal Revenue Service, preliminary tax figures for 1993
9. Source: National Federation of Independent Business (Partial List)
10. Source: Bureau of Labor Statistics, January 1994
11. Source: Small Business Administration Office of Advocacy, 1992

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